Supreme Court, U.S.
FILED
JUL 30 200
CLERK

No. 00-1941

In The

Supreme Court of the United States

MARY DECKER SLANEY,

Petitioner,

vs.

THE INTERNATIONAL AMATEUR ATHLETIC FEDERATION

and

THE UNITED STATES OLYMPIC COMMITTEE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENT THE UNITED STATES OLYMPIC COMMITTEE'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

R.D. ZINK
HENDERSON, DAILY, WITHROW & DEVOE
2600 One Indiana Square
Indianapolis, Indiana 46204-2071
(317) 639-4121

RICHARD R. YOUNG
BRENT E. RYCHENER
Counsel of Record
TRAVIS T. TYGART
HOLME ROBERTS & OWEN LLP
90 South Cascade Avenue, Suite 1300
Colorado Springs, Colorado 80903
(719) 473-3800

Counsel for Respondent The United States Olympic Committee

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Respondent The United States Olympic Committee does not have any corporate parents or stockholders.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

I. THE PROCEEDINGS BELOW 1

II. STATEMENT OF FACTS 2

REASONS FOR DENYING THE PETITION 7

I. SLANEY'S PETITION ARGUES NOTHING MORE THAN THE MISAPPLICATION OF A PROPERLY STATED RULE OF LAW 7

II. THE SEVENTH CIRCUIT PROPERLY AFFIRMED THE DISMISSAL OF SLANEY'S STATE-LAW CLAIMS 7

A. The Courts Below Properly Dismissed Slaney's State-law Claims Against the USOC Because There Is No Private Right of Action Under the Amateur Sports Act and These Claims Are Preempted by the Act .. 7

B. Even If the Court Below Had Not Found Slaney's State-law Claims Preempted, Slaney's Claims Fail Based on Slaney's Failure to Exhaust Administrative Remedies ... 21

1. Slaney's claims necessarily implicate USATF; on the other hand, if, as Slaney contends, her claims do not implicate USATF, then her claims lie only against the IAAF over which the USOC has no control 24

TABLE OF CONTENTS – Continued

Page

2. To the extent Slaney's claims rest on the USOC's alleged failure to perform its oversight role properly, the Act provides an applicable administrative remedy... 27

CONCLUSION 30

TABLE OF AUTHORITIES

Page

CASES

Barnes v. International Amateur Athletic Federation, 862 F. Supp. 1537 (S.D. W. Va. 1993) 21, 23, 29

Cantrell v. United States Soccer Fed., 924 P.2d 789 (Okla. App. 1996) 10

DeFrantz v. United States Olympic Comm., 492 F. Supp. 1181 (D.D.C. 1980), *aff'd without opinion*, 701 F.2d 221 (D.C. Cir. 1980) 8

Devereaux v. Amateur Softball Association of America, 768 F. Supp. 618 (S.D. Ohio 1991) 24

Dolan v. United States Equestrian Team, Inc., 608 A.2d 434 (N.J. App. 1992) 11, 24

Freightliner Corp. v. Myrick, 514 U.S. 280 (1995) 11

Geier v. American Honda Motor Co., 529 U.S. 861 (2000) 11

Harding v. United States Figure Skating Ass'n, 851 F. Supp. 1476 (D. Or. 1994), *vacated*, 879 F. Supp. 1053 (D. Or. 1995) 14, 15, 16, 17, 18, 19

Hines v. Davidowitz, 312 U.S. 52 (1941) 11

Lindland v. United States Wrestling Ass'n, 227 F.3d 1000 (7th Cir. 2000) 18

Martinez v. United States Olympic Comm., 802 F.2d 1275 (10th Cir. 1986) 8

Michels v. United States Olympic Comm., 741 F.2d 155 (7th Cir. 1984) ..... *passim*

Oldfield v. The Athletic Congress, 779 F.2d 505 (9th Cir. 1985) 8

TABLE OF AUTHORITIES – Continued

Page

Reynolds v. IAAF, 841 F. Supp. 1444 (S.D. Ohio 1992) 14

Reynolds v. International Amateur Athletic Federation, 505 U.S. 1301 (1992) 14

Reynolds v. The Athletics Congress of the USA, Inc., Civil Action No. C-2-91-0003, 1991 U.S. Dist. LEXIS 21191(S.D. Ohio 1991) 22

Reynolds v. The Athletics Congress of the USA, Inc., No. 91-3285, 1991 U.S. App. LEXIS 12277 (6th Cir. June 11, 1991) 22

Walton-Floyd v. United States Olympic Comm., 965 S.W. 2d 35 (Tex. App. 1998) 10, 11

STATUTES

Fed. R. Civ. P. 12(b)(1) 17

Fed. R. Civ. P. 12(b)(6) 2

36 U.S.C. § 374(8) 12, 14

36 U.S.C. § 375(a)(5) 12, 27

36 U.S.C. § 395 ..... 5, 11, 12, 28

36 U.S.C. §§ 220501 *et seq.* 8

36 U.S.C. § 220503(3), formerly § 373(3) 10, 21

36 U.S.C. § 220503(8), formerly 36 U.S.C. § 374(8) 8, 10, 14

36 U.S.C. § 220503(12) 10

36 U.S.C. § 220505(b)(9) 9

36 U.S.C. § 220509(a) 17

TABLE OF AUTHORITIES – Continued

Page

36 U.S.C. § 220522(a)(4), formerly 36 U.S.C. § 391(b)(3) 11, 14

36 U.S.C. § 220523(a)(5), formerly § 393(5) 21

36 U.S.C. § 220527 28

36 U.S.C. § 220529, formerly 36 U.S.C. § 395 ..... 6, 11, 22, 28

LEGISLATIVE HISTORY

144 Cong. Rec. S12741, S12777 (October 21, 1998) 19

STATEMENT OF THE CASE

I. THE PROCEEDINGS BELOW

Petitioner Mary Decker Slaney ("Slaney") filed this lawsuit in April 1999 shortly after withdrawing from the International Amateur Athletic Federation ("IAAF") arbitration proceeding in which the IAAF ruled that Slaney had committed a doping offense. Although the USOC had never charged Slaney with a doping offense, and had never prosecuted or disciplined Slaney for a doping offense, Slaney nevertheless chose to include the USOC in her lawsuit against the IAAF. Slaney's complaint alleges that the USOC violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and also alleges various state-law claims against the USOC: breach of contract, negligence, breach of fiduciary duty of good faith and fair dealing, fraud, constructive fraud, and negligent misrepresentation.

The USOC moved in the district court to dismiss each claim against the USOC. With respect to Slaney's state-law claims, the USOC contended that the Amateur Sports Act (the "Act") does not create a private right of action against the USOC, Slaney's claims are preempted by the Act, and in any event Slaney failed to exhaust her administrative remedies under the Act.

The district court granted the USOC's motion to dismiss. The court concluded that "the Amateur Sports Act presents a wall too high to hurdle for Slaney's [state-law] claims against the USOC." Petition, 60a. Noting that the Act gives the USOC the exclusive right to determine disputes over eligibility, the court held that the Act does not offer a private right of action and "Slaney's claims are preempted as they would stand as an obstacle to the accomplishment of Congress' objective in passing the Amateur Sports Act." *Id.* at 62a-63a. The district court

also noted that Slaney's real dispute is with the IAAF: "It was the actions of the autonomous IAAF that suspended Slaney and ultimately found her guilty of the doping offense, and as Judge Posner noted in [*Michels v. United States Olympic Comm.*, 741 F.2d 155 (7th Cir. 1984)], an international federation 'can thumb its collective nose at the U.S. Olympic Committee.' *Id.*, 741 F.2d at 159 (Posner, J. concurring). Slaney's real dispute is with the IAAF, not the USOC, as the USOC was powerless to act on her behalf." Petition, 63a.

In an opinion by Chief Judge Flaum, joined by Circuit Judges Posner and Ripple, the Seventh Circuit affirmed. The court cited the "numerous cases which have adopted the principle that eligibility decisions fall within the USOC's exclusive jurisdiction over all matters pertaining to United States' participation in the Olympic Games." Petition, 23a. Finding that each of Slaney's state-law claims "are actually challenges to the method by which the USOC determines eligibility of athletes," the Seventh Circuit held that the district court correctly had determined that it lacked subject matter jurisdiction over Slaney's state-law claims against the USOC.[1]

II. STATEMENT OF FACTS

This case arises from a urine sample provided by Slaney after she competed in the 1996 Olympic trials for the Atlanta Olympics. Although the USOC arranged for the initial collection, transportation, and testing of Slaney's urine sample, the facts below demonstrate that

---

[1] The Seventh Circuit also affirmed the district court's dismissal of Slaney's RICO claim against the USOC under Rule 12(b)(6). Slaney does not seek review of the dismissal of her RICO claim.

the IAAF and USA Track and Field ("USATF") subsequently made all decisions and took all actions with respect to the investigation, prosecution, and suspension of Slaney for a doping offense. Slaney was prosecuted and suspended under the IAAF's own doping control rules, and Slaney has not alleged that the USOC had any power to change the IAAF's rules.

After competing in the 1996 Olympic trials for the Atlanta Olympics, Slaney provided a urine sample for drug testing. Complaint, ¶¶ 34-36.[2] The USOC arranged for the collection and initial testing of the urine sample in accordance with the International Olympic Committee ("IOC") Medical Code and the doping rules adopted by the IAAF and USATF. Complaint, ¶¶ 40-42. Under the United States National Anti-Doping Program, USATF, as the national governing body ("NGB") for track and field, was responsible for deciding whether testosterone was included on the list of prohibited substances with respect to American track athletes. "Pursuant to the Program, the definition of doping and the incorporation of a list of prohibited substances is left to the [NGBs, such as USATF]." R. 45, Exhibit 1 at 87. USATF, as a member of the IAAF, "is subject to and required to enforce the IAAF's rules and regulations, including particularly the [IAAF's] rules and regulations governing doping." Complaint, ¶ 11. Slaney, as a member of USATF, is also subject to the rules and regulations of the IAAF. Complaint, ¶ 12.

Pursuant to the doping rules of IAAF and USATF, the IOC-accredited laboratory at UCLA tested Slaney's urine sample for the ratio of testosterone to epitestosterone (the "T/E test"). The laboratory's testing showed that Slaney's

---

[2] "Complaint" refers to Slaney's complaint, docket entry number 1. "R. ___" refers to the record below followed by the docket entry number.

T/E ratio exceeded 6:1. Specifically, Slaney's T/E ratios for the A and B samples were 9.5:1 and 11.6:1. Therefore, under the rules of the IAAF and USATF, the laboratory reported that Slaney's T/E ratio in her urine sample exceeded 6:1.[3]

In its June 1996 letter to USATF regarding the test results for Slaney's urine sample, the USOC referenced the IOC Medical Code regarding a follow-up investigation of the T/E ratio. Complaint, ¶ 41. In a subsequent letter to USATF in July 1996, the USOC emphasized that whether or not Slaney's urine sample was considered "a final positive" was dependent upon USATF's investigation, and that any hearing in connection with the T/E ratio should be in accordance with USATF and IAAF's rules. Complaint, ¶ 52.

---

[3] The IAAF's doping regulations, like the IOC Medical Code, "set the prohibited [T/E] ratio at 6:1." Complaint, ¶ 25. Slaney contends that, if the USOC had "raised the trigger for a suspicious T/E ratio from 6:1 to 10:1," Slaney's T/E ratio would not have been reported as "suspicious." Petition, 24 n. 32. Slaney's argument is academic, as the USOC did not set or have any power to change the IAAF rule under which Slaney was suspended. The IAAF, like each of the thirty-five IOC-recognized international sports federations, establishes the rules for the sport it governs, including doping rules. While Slaney argues that "some Olympic federations retain the ratio at 10:1," Petition, 9 n. 14, every international Olympic sports federation except tennis has adopted the IOC T/E ratio rule (*i.e.*, a ratio over 6:1 is considered elevated, but the relevant entity must conduct an investigation before the sample is declared positive). The international tennis federation has taken the unique position, contrary to the other thirty-four international sports federations, that the T/E ratio line should be drawn at 10:1; under the tennis federation's rule, however, no further investigation is required before the tennis federation deems the test positive for a doping offense.

After being informed by the UCLA laboratory about the test results on Slaney's urine sample, the IAAF assumed full control over the investigation and prosecution process, Complaint at ¶ 42, with USATF acting as "the IAAF's agent for investigative activities in the United States." Complaint, ¶ 49. Thus, the IAAF "directed" USATF to obtain an explanation of the elevated T/E ratio from Slaney; "ordered" USATF to investigate any prior test results; and "ordered" that Slaney's explanation of any previous tests be transmitted to the IAAF within ten days. Complaint, ¶ 42. USATF carried out these activities "on behalf of the IAAF." Complaint, ¶ 43. According to plaintiff, "all of the IAAF's dealings with American athletes who are investigated for or charged with doping offenses are conducted by USATF on behalf of the IAAF." R. 49, p. 42.

Beginning in July 1996, "the IAAF purported to carry out the investigation [of the elevated T/E ratio] under the rules of the IOC." Complaint, ¶ 45. In February 1997, the IAAF "reported the results of its investigation to USATF." Complaint, ¶ 63. The IAAF "ordered" that Slaney's urine sample "be deemed to be positive for testosterone, according to the IAAF prohibited substances list." Complaint, ¶ 63. The IAAF also "ordered USATF to prosecute Mrs. Slaney for a testosterone violation under IAAF rules." R. 49, p. 43. In June 1997, prior to the conclusion of USATF's proceedings, the IAAF notified USATF that the IAAF had decided to suspend Slaney. Complaint, ¶ 71. In accordance with the IAAF's decision, USATF suspended Slaney. Complaint, ¶ 76.

At about the same time that the IAAF issued its suspension, Slaney filed an administrative complaint with the USOC "under the Amateur Sports Act, 36 U.S.C. § 395." Complaint, ¶ 67; R. 45, Exhibit 2 at 2. Slaney asserted in her administrative complaint, as she does

here, that USATF's application of the IAAF's T/E ratio unlawfully discriminates against women and lacks scientific basis, and that USATF's application of the IAAF's T/E ratio denies female athletes a fair hearing. R. 45, Exhibit 2 at 26, 37. Slaney chose not to pursue her administrative complaint with the USOC to its conclusion. If she had done so, she would have been entitled to seek review of the USOC's decision through the arbitration process established by the Act. *See* 36 U.S.C. § 220529, formerly 36 U.S.C. § 395.[4]

In September 1997, USATF held a hearing, as required by the IAAF, with respect to Slaney's elevated T/E ratio. On September 16, 1997, USATF ruled that no doping violation had occurred. Complaint, ¶ 80. In January 1998, the IAAF, under its own rules, referred USATF's decision to an IAAF arbitration panel. Complaint, ¶ 96. In April 1999, the IAAF's arbitration panel found that Slaney had committed a doping offense. R. 38, Exhibit 11.

Slaney's own summary of her case is instructive as to the USOC's lack of involvement in the material events of this case. Slaney summarizes her claims against the USOC as the USOC's "improperly supervising" the investigation conducted by the IAAF. Petition, 23. Similarly, in the court below, Slaney condensed her claims as follows: "The IAAF, the international federation for the sport of track and field, charged Mrs. Slaney with a doping offense under [the IAAF's] rules"; although USATF exonerated Slaney, "the IAAF subsequently challenged [the USATF's] decision under [the IAAF's] rules"; and "the parties to the arbitration were IAAF and USATF"; thus,

---

[4] The Act was reenacted and amended in October 1998, and is now known as the "Ted Stevens Olympic and Amateur Sports Act." References to the Act will include both the current and predecessor statutory cites.

"Mrs. Slaney's principal claim is that the testosterone test upon which the IAAF based its doping charge is invalid for female athletes, in that it does not prove doping beyond a reasonable doubt, as the IAAF rules require." Slaney's Seventh Circuit Brief, p. 3.

In short, the USOC was not a party to, and did not participate in, the IAAF's/USATF's investigation, prosecution and suspension of Slaney. Furthermore, the investigation, prosecution and suspension occurred under the IAAF's rules.

REASONS FOR DENYING THE PETITION

I. SLANEY'S PETITION ARGUES NOTHING MORE THAN THE MISAPPLICATION OF A PROPERLY STATED RULE OF LAW.

In her Petition, Slaney does not contend there is a conflict between courts on the question presented against the USOC. Nor does Slaney argue the decision below conflicts with relevant decisions of this Court. While Slaney asserts that the Seventh Circuit has decided an important question of federal law that should be settled by this Court, the Petition as a whole reveals that Slaney actually contends that the lower court misapplied a properly stated rule of law. Thus, there is no reason for this Court to grant the Petition.

II. THE SEVENTH CIRCUIT PROPERLY AFFIRMED THE DISMISSAL OF SLANEY'S STATE-LAW CLAIMS.

A. The Courts Below Properly Dismissed Slaney's State-law Claims Against the USOC Because There Is No Private Right of Action Under the Amateur Sports Act and These Claims Are Preempted by the Act.

Slaney's purported state-law claims against the USOC actually rest upon alleged duties created by the

Amateur Sports Act, 36 U.S.C. §§ 220501 *et seq.* *See* Complaint at ¶ 9 (alleging USOC's duties under the Act); ¶ 67 (alleging that USATF proceedings "violated the Act"); ¶¶ 115, 127, 129 (alleging contract and special relationship based on USOC constitution, which includes provisions required by Act); ¶ 138 (alleging duty to "protect [plaintiff's] right to compete," *see* 36 U.S.C. § 220503(8), formerly 36 U.S.C. § 374(8)).

Every court addressing the issue has held that no private right of action exists under the Act. The Seventh Circuit, in a prior decision, held that the legislative history of the Act "clearly reveals that Congress intended not to create a private cause of action under the Act":

> The Act as originally proposed contained an 'Amateur Athlete's Bill of Rights,' which included a civil cause of action in federal district court for any athlete against an NGB, educational institution, or other sports organization that threatened to deny the athlete's right to participate in certain events. . . . Congress omitted the bill of rights provision in the Act's final version. Congress thus considered and rejected a cause of action for athletes to enforce the Act's provisions.

Michels, supra, 741 F.2d at 157-58.

Numerous other courts similarly have held that the Act does not create a private right of action. *See Martinez v. United States Olympic Comm.,* 802 F.2d 1275, 1281 (10th Cir. 1986) (affirming dismissal of boxer's suit for personal injury under the Act); *Oldfield v. The Athletic Congress,* 779 F.2d 505, 508 (9th Cir. 1985) (affirming summary judgment in favor of the USOC on claim for damages and reinstatement; "it is highly improbable that Congress absentmindedly forgot to mention an intended private action"); *DeFrantz v. United States Olympic Comm.,* 492 F. Supp. 1181, 1192 (D.D.C. 1980), *aff'd without opinion,*

701 F.2d 221 (D.C. Cir. 1980) (dismissing athletes' suit to lift 1980 boycott of summer Olympics; the legislative history of the Act is "barren of any implication that Congress intended to create a private cause of action").

In the courts below, Slaney asserted that she is not "seeking to pursue a claim under the Amateur Sports Act." Slaney's Seventh Circuit Brief at 29, n. 25. Yet, Slaney's own allegations demonstrate that Slaney *does* seek to enforce rights and obligations created by the Act. Slaney alleges that, *under the Amateur Sports Act*, "the USOC is responsible for controlling and/or supervising the drug testing operations of the [USATF]." Complaint, ¶ 9. This allegation is central to Slaney's claims against the USOC. Furthermore, Slaney argued below that the IAAF, acting through USATF, violated the Act by unlawfully suspending her, R. 49 at 14, and that the USOC should have done something to prevent the IAAF/USATF from committing this violation. R. 49, pp. 10, 15. In short, Slaney seeks to enforce provisions of the Act, and her wrongly-denominated state-law claims fail as a matter of law. *Michels*, 741 F.2d at 157-58.[5]

Even if Slaney's purported state-law claims against the USOC were something more than an indirect attempt to enforce the Act, the Seventh Circuit held correctly that the Act preempts these claims. The court first looked to the express language of the Act:

> According to the Amateur Sports Act, one of the purposes of the USOC is to exercise exclusive jurisdiction over all matters pertaining to United States participation in the Olympic Games. *See*

---

[5] In revising the Amateur Sports Act in 1998, Congress indicated its approval of the judiciary's interpretation of the Act. Specifically, Congress provided that "[no] provision of this chapter shall create a private right of action under this chapter." 36 U.S.C. § 220505(b)(9).

> 36 U.S.C. § 220503(3). The Act also states that the USOC is designed "to provide swift resolution of conflicts and disputes involving amateur athletes, national governing bodies, and amateur sports organizations," and "to encourage and provide assistance to amateur athletic activities for women." *Id.* at §§ 220503(8), 220503(12).

Petition, 23a.

The Seventh Circuit then examined other reported decisions concerning the Act. In the only reported judicial decisions directly addressing the preemption issue prior to the lower court decisions in this case, both Texas and Oklahoma state appellate courts held that the Act preempts an athlete's state-law claims against the USOC or NGBs:

> The interest of maintaining consistent interpretations among jurisdictions requires the [Amateur Sports Act] to pre-empt claims asserted under state tort law. To hold a common law duty exists outside the scope of the Act, thereby enabling an individual athlete to bring suit, threatens to override the intent of Congress and open the door to inconsistent interpretations of the Act.

Walton-Floyd v. The United States Olympic Comm., 965 S.W. 2d 35, 40 (Tex. App. 1998); *accord, Cantrell v. United States Soccer Fed.*, 924 P.2d 789, 792 (Okla. App. 1996) ("We find Congress, as a general matter, intended to leave questions of eligibility of those involved in amateur athletics to be resolved in accordance with the Act.").

Walton-Floyd, Cantrell, and the lower court decisions in this case comport with the teachings of this Court on federal preemption. State law, and state-law remedies, are preempted if an "actual conflict" exists between state and federal law; such a conflict occurs "where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

Freightliner Corp. v. Myrick, 514 U.S. 280, 287 (1995), quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *Geier v. American Honda Motor Co.*, 529 U.S. 861, 881-82 (2000) (state-law claims preempted where state tort law "would have stood 'as an obstacle to the accomplishment and execution of' the important means-related federal objectives"), quoting *Hines*, 312 U.S. at 67. In this case, Slaney's pursuit of a judicial remedy under state law to enforce goals and duties established by the Act would conflict with, and frustrate, Congress' clearly-stated intent that the Act gives exclusive jurisdiction over eligibility issues to the USOC and NGBs. Furthermore, allowing athletes to pursue protracted litigation under the common law of each state would conflict with a principal purpose of the Act: establishing uniform eligibility standards and a comprehensive mechanism for the prompt resolution of eligibility disputes outside the judicial process. *Walton-Floyd*, 965 S.W. 2d at 40.[6]

In *Dolan v. United States Equestrian Team, Inc.*, 608 A.2d 434, 436-37 (N.J. App. 1992), the court explained that the Act must not be subjected to differing interpretations under the common law of individual states:

> The prompt resolution of disputes was a principal purpose of the Act. [Citations omitted.] One of the enumerated purposes of the United States Olympic Committee (USOC), the vehicle created by Congress to coordinate amateur athletics and national governing bodies, was to

---

[6] Indeed, Slaney herself filed a complaint with the USOC under the Amateur Sports Act dealing with the same issues as in this case. *See* Complaint, ¶ 67. Slaney did not avail herself of further administrative remedies under the Act. *See* 36 U.S.C. § 220522(a)(4) and 220529, formerly 36 U.S.C. § 391(b)(3) and § 395(c).

> provide for the swift resolution of conflicts and disputes involving amateur athletes, national governing bodies, and amateur sports organizations, and protect the opportunity of any amateur athlete, coach, trainer, manager, administrator, or official to participate in amateur athletic competition . . . [36 U.S.C.A. § 374(8)]

To this end the USOC was empowered to

> facilitate, through orderly and effective administrative procedures, the resolution of conflicts or disputes which involved any of its members and any amateur athlete, coach, trainer, manager, administrator, official, national governing body, or amateur sports organization and which arise in connection with their eligibility for and participation in the Olympic Games, the Pan-American world championship competition, or other protected competition as defined in the constitution and bylaws of the [USOC] . . . [36 U.S.C.A. § 375(a)(5).]

and was required to establish an appropriate mechanism in its constitution and bylaws.

. . .

> And finally, Congress set forth a detailed mechanism by which grievances or disputes were to be resolved. 36 U.S.C.A. § 395.
>
> [W]e believe the Act should be uniformly interpreted; that it would be inappropriate to attribute different or unique meanings to its provisions in New Jersey and thus create a jurisdictional sanctuary from the Congressional determination that these types of disputes should be resolved outside the judicial processes.

Accord, Michels, supra, 741 F.2d at 159 (Posner, J., concurring) ("there can be few less suitable bodies than the

federal courts for determining the eligibility, or the procedures for determining the eligibility, of athletes").

In response to the lower courts' finding that her state law claims would "stand as an obstacle to the accomplishment of the full purposes and objectives of Congress," Slaney contends that her "state law claims are not an attempt to relitigate her eligibility to compete. . . . " Petition, 18. Slaney likewise asserted below that "she does not ask this Court to determine her eligibility to compete under the Amateur Sports Act, or to otherwise interfere with the USOC's activities or responsibilities under the Act." R. 49, p. 51. Yet, as the Seventh Circuit found, Slaney's own arguments plainly rebut this assertion.

According to Slaney's own allegations, the Act establishes the USOC as "the domestic representative or agent of the [IOC] responsible for carrying out the mission of the IOC and the Olympic Movement in the USA," Complaint, ¶ 8; "the IOC dictates in principal part the use of the T/E ratio by . . . the USOC and the IAAF, as a proxy for testosterone," R. 49, p. 64; and the USOC is "bound by the rules and decisions of the IOC," R. 49, p. 63. In other words, Slaney acknowledges that the IOC mandates application of the T/E ratio by all members of the IOC for determining eligibility, and that the USOC must comply with the IOC rule. Slaney nevertheless seeks to impose liability on the USOC under state law for allowing USATF's use of the T/E ratio and to enjoin the USOC from using the T/E ratio in doping eligibility hearings. This would result in different doping standards in different states and would put the USOC and United States athletes in violation of IOC doping standards. It is difficult to imagine state-law claims that would more clearly

interfere with the USOC's activities or responsibilities under the Act.[7]

Slaney also criticizes the Seventh Circuit's preemption analysis based on Slaney's assertion that "federal courts have already intervened *directly* into eligibility disputes to protect the state law rights of Olympic athletes. . . . " Petition, 27 (emphasis in original). In support, Slaney cites *Reynolds v. International Amateur Athletic Federation*, 505 U.S. 1301 (1992), and *Harding v. United States Figure Skating Ass'n*, 851 F. Supp. 1476, 1479 (D. Or. 1994), *vacated*, 879 F. Supp. 1053 (D. Or. 1995). Slaney is wrong.

In *Reynolds*, Justice Stevens, in his capacity as a Circuit Justice, granted an athlete's application for stay of the Sixth Circuit's order staying an injunction entered by the district court in the athlete's favor. As the district court in that case had noted, however, the athlete's complaint named only the IAAF as defendant, and the decision dealt only with the IAAF's suspension of the athlete. *Reynolds v. IAAF*, 841 F. Supp. 1444, 1448 (S.D. Ohio 1992). For that reason, the *Reynolds* lower courts and Justice Stevens had no reason to, and did not, address the applicability or preemptive force of the Amateur Sports Act with respect to state-law claims.

With respect to Slaney's reliance on the Oregon district court's ruling in *Harding*, the lower courts thoroughly distinguished *Harding* from this case. As both courts emphasized, the *Harding* court was careful not to intervene in the *merits* of the eligibility dispute, but rather simply upheld the athlete's *procedural* right to reasonable

---

[7] Slaney's state-law claims would also conflict with Congress' explicit objective for a comprehensive administrative scheme for the swift resolution of eligibility disputes and binding arbitration regarding eligibility determinations. *See* 36 U.S.C. §§ 220503(8) and 220522(a)(4), formerly 36 U.S.C. §§ 374(8) and 391(b)(3).

time to prepare for the administrative hearing concerning the athlete's eligibility.

Judge Dillin correctly found that *Harding* does not apply where, as here, an athlete seeks judicial review on the merits of an eligibility dispute:

> Two additional factors militate against adopting the rule of law expressed in *Harding*. First, the district court warned that a reviewing court should not intervene in the merits of the underlying dispute. *Id*. Here, the underlying dispute is the validity of the T/E ratio test used in testing for testosterone. Any action by the Court would require consideration of whether this test is valid or is actually a fraudulent attempt by the USOC to cover up its inability to accurately test for testosterone. Hence, we would be doing precisely what the *Harding* court deemed inappropriate. Second, the issue decided in *Harding* dealt not with eligibility but whether a hearing set for the athlete was indeed reasonably convenient for all parties. Slaney asks this Court to pass judgment on far more and invalidate a test used to determine compliance with anti-doping rules followed worldwide. Consequently, the Court finds *Harding* inapplicable to the case at bar.

Petition, 62a.

Similarly, the Seventh Circuit properly held that *Harding* does not support Slaney's position. The court first described *Harding's* self-imposed limitations:

> [W]hile carving out this limited exception to the preemption created by the Amateur Sports Act, the opinion forewarned that while examining whether internal rules had been complied with, the courts "should not intervene in the merits of the underlying dispute."

Petition, 25a. The court then held that Slaney's claims against the USOC go well beyond the limited exception recognized in *Harding*:

> While Slaney attempts to skirt the issue, what she is actually alleging is that she was injured by the USOC's determination that she was ineligible to compete. Similarly, Slaney's negligence claim against the USOC posits that the USOC breached a duty to Slaney by using the T/E ratio as a proxy for doping, and that as a result Slaney was damaged. Slaney's other state-law claims are no different. Examination of any of those claims would require an Article III court to examine as an underlying issue the validity of the T/E test, an endeavor we cannot partake in.
>
> We note that throughout her complaint Slaney attempts to avoid any mention of the fact that her damages arise from the USOC's determination regarding her eligibility. We assume that such a tactic is a recognition of what we have already stated: the USOC has exclusive jurisdiction, under the Amateur Sports Act, to determine all matters pertaining to eligibility of athletes. Yet, Slaney cannot escape the fact that her state-law claims, whether framed as a breach of contract, negligence, breach of fiduciary duty, fraud, constructive fraud, or negligent misrepresentation, are actually challenges to the method by which the USOC determines eligibility of athletes. Slaney does not suggest that the organization contravened its own guidelines, and as Slaney freely admits, the Amateur Sports Act creates no private cause of action. Thus, the district court was correct in determining that it lacked subject matter jurisdiction over Slaney's state-law claims against the USOC and

> thus in dismissing those causes of action pursuant to Fed. R. Civ. P. 12(b)(1).

Petition, 26a-27a.

In a new argument not raised below, Slaney also contends that "Congress itself has recognized the availability of state law remedies to challenge the manner in which eligibility determinations are made." Petition, 28. Slaney argues that Congress, by amending the Act to include an "anti-injunction" provision in response to the *Harding* decision, endorsed the availability of state-law remedies for an athlete challenging eligibility determinations and standards established by the USOC.

Congress' action does not support Slaney's position. In 1998, as part of the re-enactment of the Act, Congress added an anti-injunction provision:

> In any lawsuit relating to the resolution of a dispute involving the opportunity of an amateur athlete to participate in the Olympic Games, the Paralympic Games, or the Pan-American Games, a court shall not grant injunctive relief against the [USOC] within 21 days before the beginning of such games if the [USOC], after consultation with the chair of the Athletes' Advisory Council, has provided a sworn statement in writing executed by an officer of the [USOC] to such court that its constitution and bylaws cannot provide for the resolution of such dispute prior to the beginning of such games.

36 U.S.C. § 220509(a). This provision does not suggest in any way that an athlete has state-law rights to challenge the merits of an eligibility determination made by the USOC under the Act. The amendment merely recognizes that at least one court, the *Harding* court, previously had granted injunctive relief on procedural grounds relating to eligibility disputes pending under the Act, and that

such injunctive relief might impede the exclusive authority of the USOC to select athletes for competition. Far from validating state-law challenges to the USOC's exclusive jurisdiction to resolve eligibility disputes, the amendment affirms the USOC's exclusive authority. *See Lindland v. United States Wrestling Ass'n*, 227 F.3d 1000, 1008 (7th Cir. 2000) ("[The anti-injunction amendment] is designed to prevent a court from usurping the USOC's powers when time is too short for its own dispute-resolution machinery to do its work.").[8]

Slaney further asserts that, if the Seventh Circuit's analysis in this case were correct, Congress would have had no reason to add the anti-injunction provision. Yet, the Seventh Circuit recognized in this case that an athlete might obtain an injunction under the very limited circumstances presented in *Harding*. Thus, even under the Seventh Circuit's analysis in this case, the anti-injunction

---

[8] Furthermore, if Congress had understood, as Slaney suggests, that an athlete could seek judicial relief on the *merits* of an eligibility dispute (*e.g.*, an athlete could get a court to throw out an entire doping rule, as Slaney attempts in this case), then it would have made no sense for Congress to allow the USOC to defeat this substantive claim simply by submitting a statement that the USOC's internal procedures cannot provide resolution of the dispute quickly enough. In other words, if Congress had believed that courts could have the final word on the merits of eligibility disputes, then the issue of whether there would be enough time for the USOC's internal procedures to run their course would have been irrelevant. If, on the other hand, Congress contemplated only that a court might intervene on procedural grounds such as ensuring reasonable time for a hearing before the USOC, then it makes perfect sense that Congress would allow the USOC to bar the claim by filing a statement that there is not enough time to complete a hearing under the USOC's internal procedures before the games begin.

provision could have been deemed necessary by Congress in order to ensure that a *Harding*-type injunction would not interfere with the USOC's exclusive authority to select Olympic competitors.

Slaney also mischaracterizes the legislative history of the anti-injunction amendment. She states:

> According to [Senator Stevens], who sponsored the amendment, the purpose of this provision was to make sure that the USOC could select a team for the Olympics if a *state law dispute affecting eligibility* could not be resolved in time for the USOC to decide the athlete's eligibility to compete before the Games are to begin. 144 Cong. Rec. S12741, S12777 (October 21, 1998).

Petition, 28 n. 36 (emphasis added). The legislative history, however, makes no reference to a "state law dispute affecting eligibility." Instead, Senator Stevens' summary provides only that:

> Section 142 protects the USOC against court injunction in selecting athletes to serve on the Olympic, Paralympic, or Pan-American teams within 21 days of those games if the USOC's constitution and bylaws cannot provide a resolution before the games are to begin.

144 Cong. Rec. S12741, S12777 (October 21, 1998). This provides no support for Slaney's position.

Finally, Slaney argues that Congress could not have intended to preempt state-law claims because Slaney would be left without any remedy. Yet, with respect to any matter pertaining to her eligibility to compete, Slaney had administrative remedies under the Act, as described in detail in Section II.B. below. Slaney responded to this argument by announcing: "This action is not about Mrs. Slaney's eligibility to compete," and that her claims do not involve USATF. Slaney's Seventh Circuit Brief, p. 28; R. 49, pp. 2, 54. Yet, in an attempt to save her claims

against the IAAF, Slaney herself states that "[a] major portion of Mrs. Slaney's damages arise out of injuries she suffered in Indiana as a result of the conduct of the IAAF itself or the conduct of USATF, as agent of the IAAF" in "unlawfully suspending [Slaney] from international and domestic competition." R. 49, p. 44. Slaney further states that, due to the unlawful suspension imposed by USATF, as an agent of the IAAF, "she could not compete in Indiana, she could not qualify for the World Championships, and thus was denied an opportunity to compete in that event." *Id.* at 44-45. Slaney then alleges that the USOC "fail[ed] to protect [plaintiff's] *right to compete*" by failing to somehow intervene in the IAAF/USATF proceedings. Complaint, ¶ 138 (emphasis added). Slaney also seeks to enjoin the future use of the T/E test in doping cases involving female athletes. Complaint, p. 56. In other words, as the Seventh Circuit correctly concluded, Slaney's claims have everything to do with her prior suspension from competition by the IAAF/USATF and whether the T/E ratio may be used in future eligibility determinations.[9]

Moreover, contrary to Slaney's assertion, the Seventh Circuit's ruling that the Act preempts Slaney's state-law claims, as they relate directly to her eligibility to compete, would not leave athletes without any remedy for claims unrelated to eligibility disputes. Slaney suggested below that an athlete "who contracted AIDS from a contaminated needle" during athlete drug testing would have no legal recourse. In that situation, which would not involve

---

[9] Doping standards for athletes are inseparable from eligibility determinations. Any athlete found to have committed a doping offense as a result of a T/E ratio greater than 6:1 is ineligible to compete.

a challenge to doping standards or an eligibility determination, the preemptive force of the Act's provisions regarding eligibility disputes would not apply, and the athlete could seek recourse from any party found responsible for the contaminated needle.[10]

B. Even If the Court Below Had Not Found Slaney's State-law Claims Preempted, Slaney's Claims Fail Based on Slaney's Failure to Exhaust Administrative Remedies.

The Act grants the USOC and NGBs the power to determine eligibility for amateur sporting events. *See* 36 U.S.C. § 220503(3) and 220523(a)(5), formerly §§ 373(3) and 393(5). Congress intended, in enacting the Act, to keep the regulation of amateur athletics out of the courtroom and within the structure established by the appropriate NGB or the USOC. Congress specifically rejected proposed legislative provisions that would have created authority for the judicial system to become embroiled in issues related to amateur athletics, and Congress specifically identified the USOC and NGBs as having exclusive jurisdiction over eligibility for competitions.[11] Congress

---

[10] The USOC has not performed any blood testing on athletes. Slaney's counsel either assumed mistakenly that the USOC performs blood testing on athletes, or operated under a misunderstanding of how urine samples are obtained. No needles are used in the process.

[11] Congress rejected a provision that would have provided special jurisdiction in district courts for certain injunctive proceedings, rejected a provision that would have allowed arbitrators to petition district courts for enforcement of subpoenas issued by arbitrators, and struck down a provision that would have provided district courts with jurisdiction to enforce decisions of arbitrators. *See Barnes v. International Amateur Athletic Federation*, 862 F. Supp. 1537, 1544 (S.D. W. Va. 1993).

recognized that eligibility disputes are best handled by the organizations that are uniquely capable of resolving such conflicts, *i.e.*, the USOC and the NGBs.

As opposed to a private cause of action in civil courts, the Act and the USOC Constitution provide a comprehensive administrative process through which an amateur athlete can address claimed violations of the Act. Furthermore, the Act and the USOC Constitution allow an athlete who is not satisfied with an NGB's final ruling the right to request an investigation by the USOC and, if the controversy is not settled to the athlete's satisfaction, to submit the matter to the American Arbitration Association for binding arbitration. *See* 36 U.S.C. § 220529, formerly 36 U.S.C. § 395. In other words, comprehensive administrative procedures are available through which Slaney's complaints must be addressed.

In *Reynolds v. The Athletics Congress of the USA, Inc.*, No. C-2-91-0003, 1991 U.S. Dist. LEXIS 21191 (S.D. Ohio 1991), the court required plaintiff to exhaust administrative remedies before bringing any action for judicial intervention. The Sixth Circuit affirmed the decision, noting that the district court had no subject matter jurisdiction because exclusive jurisdiction rested with the USOC and Reynolds had failed to exhaust his administrative remedies. No. 91-3285, 1991 U.S. App. LEXIS 12277 (6th Cir. June 11, 1991).

The *Reynolds* district court explained:

> The [Amateur Sports] Act makes an amateur sports organization's initial and continued eligibility to be recognized as a national governing body contingent on the organization providing an amateur athlete with 'fair notice and opportunity for a hearing . . . before declaring such individual ineligible to participate [in international amateur athletic competition].' (Citation

omitted, footnote omitted). The national governing body is further required to '[provide] procedures for the prompt and equitable resolution of grievances of its members'. (Citation omitted).

. . .

An amateur athlete who believes a national governing body, such as [The Athletics Congress], did not provide him a fair hearing before he was declared ineligible may file a complaint with the USOC after exhausting all administrative remedies with such national governing body.

. . .

Upon resolution by the USOC of the athlete's complaint, the aggrieved party may seek review of the USOC's disposition of this matter by filing for arbitration. (Citation omitted). The 'final decision of the arbitrators shall be binding upon the involved parties, if such award is not inconsistent with the Constitution and Bylaws of the [USOC].' (Citation omitted).

This Court finds that the Act and [The Athletic Congress'] regulations establish a comprehensive mechanism for resolution of disputes which furnishes the athlete a hearing before any declaration of ineligibility, the opportunity to pursue his claim through essentially two different appellate levels, and finally the right to have this matter sent to mandatory binding arbitration. . . . Thus, the federal doctrines requiring exhaustion of administrative remedies and submitting claims to arbitration dictate that this Court either dismiss the plaintiff's complaint or stay all further proceedings pending the plaintiff's exhaustion of his administrative remedies.

Id.; *see also, Barnes*, 862 F. Supp. 1537 (failure to exhaust administrative remedies under the Act before seeking

judicial review renders court without subject matter jurisdiction as to those issues); *Devereaux v. Amateur Softball Association of America*, 768 F. Supp. 618 (S.D. Ohio 1991) (failure to exhaust administrative remedies under the Act renders court's involvement premature); *Dolan*, 608 A.2d 434 (court affirmed dismissal of athlete's suit because plaintiff had failed to exhaust administrative remedies).

Slaney insists there are no administrative remedies to exhaust because she has not made any claims against USATF and the Act does not create an administrative process "available for a claim against the USOC itself." Petition, 24 n. 33. Slaney's argument fails for two reasons, with each detailed below. First, Slaney's claims necessarily implicate USATF, and the remedies sought by Slaney are necessarily directed at USATF; thus, Slaney must exhaust administrative remedies against USATF. Second, the thrust of Slaney's case against the USOC is that the USOC allegedly failed to fulfill its oversight role over USATF, and the Act establishes an administrative process precisely for the purpose of allowing an athlete to obtain oversight or intervention by the USOC.

1. Slaney's claims necessarily implicate USATF; on the other hand, if, as Slaney contends, her claims do not implicate USATF, then her claims lie only against the IAAF over which the USOC has no control.

Although Slaney has bent over backward to avoid implicating USATF, Slaney's complaint establishes that Slaney's claims and requested remedies directly involve USATF. Slaney herself alleges that the IAAF applied its allegedly fraudulent T/E test through USATF. Complaint, ¶ 11. In addition, Slaney asserts that she suffered injury because *USATF* complied with the IAAF's orders to prosecute and suspend Slaney under the IAAF's T/E test. R.

49, p. 43. Slaney further states that "[a]ll of the IAAF's dealings with American athletes who are investigated for or charged with doping offenses are conducted by USATF on behalf of the IAAF," *id.* at 42, and that "USATF continues to act in this manner on behalf of the IAAF," *id.* at 40. In addition, Slaney seeks to enjoin the future use of the T/E ratio. Complaint, p. 56. This remedy, by necessity, would be directed at USATF, given Slaney's acknowledgment that USATF is the means by which the IAAF enforces its rule. In short, Slaney acknowledges that USATF was, and continues to be, the entity charged with enforcing the IAAF's T/E test against Slaney. For that reason, Slaney cannot avoid the requirement that she exhaust the administrative remedies available to her under the Act with respect to USATF's application of the IAAF rule.[12]

To the extent Slaney asserts that she has no quarrel with USATF because USATF will in the future simply refuse to enforce the IAAF's rule, and the IAAF will use some means other than USATF to enforce the rule, this only shows that Slaney's real claim is against the IAAF. Slaney was prosecuted and suspended under the IAAF's doping rules, and it is undisputed that the USOC had no authority to change the IAAF's rules. As noted by the USOC below, and never disputed by Slaney: "The USOC has no control over [the IAAF]. [The IAAF] can thumb its collective nose at the USOC . . . ," paraphrasing *Michels*, 741 F.2d at 159 (Posner, J., concurring). The Act does not

---

[12] Slaney's Petition also ignores the fact that, under the USOC's National Anti-Doping Program, USATF, not the USOC, is the party responsible for deciding whether testosterone will be included on the list of prohibited substances. "Pursuant to the Program, the definition of doping and the incorporation of a list of prohibited substances is left to the NGBs." R. 45, Exhibit 1 at 87.

establish dispute resolution procedures for disputes between athletes and international federations, precisely because the USOC has no control over international sports federations such as the IAAF. *Id.* If, on the other hand, Slaney does have some quarrel with USATF's hearing process and USATF's use of the T/E ratio, then she has failed to exhaust her remedies under the Act with respect to those claims.

In these circumstances, Judge Posner's reasoning in *Michels, supra,* supports the dismissal of Slaney's claims against the USOC:

> [Plaintiff Michels'] dispute is with the International Weightlifting Federation, an international organization that is not a member of the USOC. He has no dispute with the United States Weightlifting Federation, which is a member. It is the International Weightlifting Federal that has suspended him from international competition, not the U.S. Weightlifting Federation, which backed his unsuccessful effort to get the suspension lifted and backed off only when the international federation proved adamant. Although Michels named the U.S. Weightlifting Federation as a defendant, the question is not whether he might be able to get some kind of ancillary relief against the USWF in this lawsuit (if the Amateur Sports Act could be privately enforced), but whether he had a dispute with the USWF that the U.S. Olympic Committee did not act to resolve; only then would it be possible to argue that the USOC had violated a duty that section 382b lays on it. But Michels has no dispute with the U.S. Weightlifting Federation that the USOC failed to resolve. His dispute was with the nonmember, the international federation, and it was outside the scope of section 382b.

> It is not by accident that the statute does not require the U.S. Olympic Committee to establish machinery for resolving disputes between athletes and nonmembers. See also 36 U.S.C. § 375(a)(5); H.R. Rep. No. 1627, 95th Cong., 2d Sess. 15 (1978). The USOC has no control over nonmembers. The International Weightlifting Federation can thumb its collective nose at the U.S. Olympic Committee. It can do more; if the USOC tried to put Michels on the U.S. Olympic Weightlifting team in defiance of the IWF's expulsion, the IWF could ask the International Olympic Committee to disqualify the team. Michels might succeed only in destroying the Olympic hopes of all the American weightlifters.
>
> To resolve disputes, you must have power over the disputants. That is why section 382b confines the USOC's duty of dispute resolution to disputes between athletes and members of the USOC. Even if section 382b could be enforced by a private suit, this suit would have to be dismissed for failure to state a claim.

Michels, 741 F.2d at 159.

2. To the extent Slaney's claims rest on the USOC's alleged failure to perform its oversight role properly, the Act provides an applicable administrative remedy.

A primary component of Slaney's case against the USOC is that the USOC allegedly failed to fulfill its proper oversight role with respect to USATF's prosecution and suspension of Slaney as directed by the IAAF. Slaney asserts that "the USOC took no action and permitted USATF to treat Mrs. Slaney's sample as positive, as the IAAF had ordered." Complaint, ¶ 68. Slaney further accuses the USOC of "tolerat[ing] the prosecution of Mrs.

Slaney," R. 49 at 2, and alleges that the USOC had a duty under the Act to "control and/or supervise the drug testing operations of the various National Governing Bodies for those sports." Complaint, ¶ 9.

Contrary to Slaney's dismissive statement that the Act provides no administrative process under these circumstances, Petition at 24 n. 33, Slaney did have an applicable administrative remedy. Under the Act, Slaney could have triggered the USOC's oversight and review of USATF's prosecution and suspension of Slaney. *See* 36 U.S.C. §§ 220527, 220529, formerly 36 U.S.C. § 395. If Slaney had done so, and then had disagreed with the USOC's decision, she could have sought review of the USOC's decision through arbitration before the American Arbitration Association. *Id.*

The clearest undisputed evidence on this point is the administrative complaint filed by Slaney herself under the Act on the same issues Slaney raises in this case. In her administrative complaint, Slaney asked the USOC "to compel USATF to comply with its obligations under the Act and the Constitution and Bylaws of the USOC." R. 45, Exhibit 2 at 1. Slaney argued there, as here, that USATF's application of the IAAF's T/E ratio unlawfully discriminates against women and lacks scientific basis, and that USATF's application of the IAAF's T/E ratio denies female athletes a fair hearing by unlawfully shifting the burden of proof to the athlete. *Id.* at 26, 37. By way of relief, Slaney asked the USOC to stay further USATF proceedings, determine whether the T/E ratio discriminates against women and precludes a full and fair hearing, and take any further action "to ensure that USATF complies with the Act and the USOC Constitution and Bylaws in all matters relating to Mrs. Slaney and to female athletes generally." *Id.* at 42-43.

The only thing that prevented Slaney from obtaining a decision (and binding arbitral review if requested) on Slaney's request for USOC intervention was her voluntary election to terminate prematurely the administrative process. While Slaney suggests that she did so because the "USATF has questioned the continued use of the T/E test, for the reasons alleged in Mrs. Slaney's administrative complaint," R. 49 at 54, Slaney's voluntary decision takes nothing away from the fact that the administrative process was available to her. Slaney's failure to exhaust this process renders federal courts without subject matter jurisdiction. *Barnes*, 862 F. Supp. at 1546.

In *Barnes*, the athlete contended, as Slaney does here, that he was not required to exhaust administrative remedies because his period of ineligibility had expired, and therefore it was not a dispute about eligibility. *Id.* at 1542. The court rejected this argument:

> Congressional intent to require athletes to exhaust their administrative remedies in regard to their eligibility disputes appears evident given the scope of the Act, the specific statutory mechanisms that have been established for speedy settlement of these disputes, and congressional intent to establish a centralized, monolithic structure for coordinating amateur athletics.
>
> . . .
>
> Congress clearly intended to require exhaustion of administrative remedies by athletes whose eligibility is in dispute and Congress desires that such disputes be kept out of the courts.

Id. at 1544. As in *Barnes*, the courts below lacked subject matter jurisdiction over Slaney's claims based on her failure to exhaust administrative remedies under the Act.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

R.D. ZINK
HENDERSON, DAILY, WITHROW & DEVOE
2600 One Indiana Square
Indianapolis, IN 46204-2071
Telephone: (317) 639-4121

RICHARD R. YOUNG
BRENT E. RYCHENER
Counsel of Record
TRAVIS T. TYGART
HOLME ROBERTS & OWEN LLP
90 South Cascade Avenue
Suite 1300
Colorado Springs, Colorado 80903
Telephone: (719) 473-3800

Counsel for Respondent
The United States Olympic Committee